

218A.276 Assessment and treatment program for possessors of marijuana, substituted cathinones, synthetic cannabinoid agonists or piperazines, or salvia -- Rescission of treatment order -- Voiding of conviction -- Sealing of records.

- (1) A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of marijuana pursuant to KRS 218A.1422, naphthylpyrovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone pursuant to KRS 218A.1454, synthetic cannabinoid agonists or piperazines pursuant to KRS 218A.1427, or salvia pursuant to KRS 218A.1451. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her the appropriate treatment or recovery program as indicated by the assessment that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated treatment or recovery program shall present himself or herself for registration and initiation of the treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program within the specified time, or if any time during the program of treatment or recovery prescribed, the authorized director of the treatment or recovery program finds that the person is unwilling to participate in his or her treatment, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment, or may rescind the treatment order and impose a sentence for the possession offense. Upon discharge of the person from the treatment or recovery program by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the treatment or recovery program.
- (2) The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the treatment or recovery program to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to an inpatient facility for treatment pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated treatment or recovery program of the sentence and its effective date.

- (5) The secretary of the Cabinet for Health and Family Services, or his or her designee, may authorize transfer of the person from the initially designated treatment or recovery program to another treatment or recovery program for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating treatment or recovery program and shall be notified by the secretary or his or her designee of the new treatment or recovery program to which the person was transferred.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the treatment or recovery program shall arrange otherwise.
- (7) None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation, presumptive probation, or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana, naphthylpyrovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxypropylmethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, piperazines, or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.
- (9) If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in KRS 27A.099. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.
- (10) After the sealing of the record, the proceedings in the matter shall not be used against the defendant. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.
- (11) Inspection of the sealed records may thereafter be permitted by the court or upon a motion by the person who is the subject of the records and only to those persons named in the motion.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 2, sec. 22, effective June 8, 2011; and ch. 45, sec. 11, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 12, effective April 13, 2010; and ch. 160, sec. 12, effective April 26, 2010. -- Amended 2005 Ky. Acts ch. 99, sec. 550, effective June 20, 2005. -- Amended 1998 Ky. Acts

ch. 426, sec. 490, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 10, effective July 14, 1992.

Legislative Research Commission Note (6/8/2011). This section was amended by 2011 Ky. Acts chs. 2 and 45, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (12/14/2010). During codification, a reference to KRS 218A.1451 relating to the possession of salvia in subsection (1) of this statute was inadvertently omitted from the final text reflecting the merger of the amendments to this statute in 2010 Ky. Acts chs. 149 and 160. The Reviser of Statutes has corrected this manifest clerical or typographical error.